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18 UNITED STATES DISTRICT COURT

19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 SASA MASLIC, individually and on behalf
21 of putative class, IVAN DRZAIC, ROBERT
22 HERNAUS, LEOPOLD HUBEK, LEON
23 HUDOLDETNIJAK, ELVIS KOSCAK,
24 TOMICA PANIC, STJEPAN PAPES,
25 ZELJKO PULJKO, DARKO SINCEK,
DAVID STANTE, NEDELJKO ZIVANI,
GOGO REBIC, and MITJA POGOREVC,

26 Plaintiffs,

27 v.

28 ISM VUZEM D.O.O., ISM VUZEM USA,
INC., VUZEM USA, INC., HRID-MONT
D.O.O., IVAN VUZEM, ROBERT VUZEM,
EISENMANN CORPORATION, TESLA,
INC., and DOES 1 THROUGH 50,

Defendants.

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Case No. 3:21-cv-2556

**DEFENDANTS EISENMANN
CORPORATION AND TESLA, INC.'S
NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1331, 1441, 1446 and
1453 [FEDERAL QUESTION AND CLASS
ACTION FAIRNESS ACT]**

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 **PLEASE TAKE NOTICE THAT** pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, and
3 1453, Defendants Eisenmann Corporation and Tesla, Inc. (“Defendants”) hereby remove this
4 action captioned *Maslic, et al. v. ISM Vuzem, d.o.o., et al.*, Case No. HG20072866 (the
5 “Underlying Action”) from the Superior Court of the State of California, County of Alameda to
6 the United States District Court for the Northern District of California on the following grounds.¹

7 **STATEMENT OF JURISDICTION**

8 This Court has original jurisdiction under 28 U.S.C. § 1331 as Plaintiffs bring claims under
9 the Fair Labor Standards Act, 29 U.S.C. § 206, and Plaintiff Sasa Maslic brings claims under the
10 Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1595. Removal is therefore
11 proper under 28 U.S.C. § 1441(a).

12 This Court also has original jurisdiction of this action under the Class Action Fairness Act
13 (“CAFA”), 28 U.S.C. § 1453. CAFA provides that federal district courts shall have original
14 jurisdiction over class actions where the number of proposed class members is 100 or greater, any
15 member of the putative class of plaintiffs is a citizen of a state different from that of any defendant,
16 and the aggregate amount in controversy for all putative class members exceeds \$5,000,000
17 (exclusive of interest and costs). 28 U.S.C. § 1332(d)(2). These jurisdictional requirements are
18 satisfied in this action.²

19 **BACKGROUND INFORMATION**

20 1. On or about August 27, 2020, Plaintiffs Sasa Maslic, Ivan Drzaic, Robert Hernaus,
21 Leopold Hubek, Leon Hudoldetnjak, Elvis Koscak, Tomica Panic, Stjepan Papes, Zeljko Puljko,

22 ¹ Defendants reserve the right to amend this Notice of Removal. In addition, if Plaintiffs contest
23 or the Court questions whether the allegations in this Notice of Removal suffice to invoke federal
24 jurisdiction, Defendants reserve the right to submit evidence and argument to the Court
establishing that the jurisdictional requirements are met. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 82 (2014).

25 ² By filing this notice of removal, Defendants do not intend to waive, and hereby reserve, any
26 objection as to the legal sufficiency of the claims alleged in this action and all other defenses.
27 Defendants do not agree that Plaintiffs’ purported class can or should be certified or that Plaintiffs’
28 claims are subject to class treatment in any form, and Defendants reserve all objections to and
arguments against such certification and/or treatment and will present such objections and
arguments at the appropriate juncture in this matter.

1 Darko Sincek, David Stante, Nedeljko Zivani, Gogo Rebic, and Mitja Pogorevc (“Plaintiffs”) filed
2 a complaint entitled *Sasa Maslic, et al. v. ISM Vuzem, d.o.o., et al.* in the Superior Court of
3 California, County of Alameda.

4 2. On or about October 29, 2020, Plaintiffs filed a First Amended Complaint (“FAC”)
5 in the same forum. A copy of the FAC served upon Eisenmann Corporation is attached hereto as
6 part of Exhibit A.

7 3. Plaintiffs allege causes of action for minimum wages and overtime pay under the
8 Fair Labor Standards Act, various California state labor law claims, and Plaintiff Sasa Maslic
9 alleges human trafficking claims under the Trafficking Victims Protection Reauthorization Act
10 and the California Trafficking Victims Protection Act. *Id.* Plaintiffs also state a wage and hour
11 class action under California law as against Defendants and the Vuzem defendants. (See FAC at
12 Eighth Cause of Action, ¶¶ 85–106.)

**THIS COURT HAS FEDERAL QUESTION AND
CAFA JURISDICTION OVER THIS PROCEEDING**

15 4. The FAC sets forth claims under the Fair Labor Standards Act, 29 U.S.C. § 206
16 (FAC ¶¶ 24–44) and, as to Plaintiff Sasa Maslic, claims under the Trafficking Victims Protection
17 Reauthorization Act, 18 U.S.C. § 1595 (FAC ¶¶ 107–139). This Court has original jurisdiction
18 over both claims.

19 5. This Court has supplemental jurisdiction under 28 U.S.C. § 1337 over Plaintiffs'
20 state law claims asserted in Counts 3 through 10 of the FAC because those claims are so related
21 to the federal claims in Counts 1, 2, and 9 of the FAC that they form part of the same case or
22 controversy. Plaintiffs' state wage and hour and human trafficking claims are rooted in the same
23 nucleus of facts and, in some cases, are identical to Plaintiffs' federal claims.

24 6. This Court also has original jurisdiction under CAFA. To be sure, Defendants deny
25 that Plaintiffs have any viable claims, have properly asserted any causes of action, or that Plaintiffs
26 can maintain any claim on behalf of the referenced class. Nevertheless, Plaintiffs allege that the
27 proposed class consists of 177 members. (FAC ¶ 88.) Defendants are entitled to rely on this
28 estimate. *See Arias v. Residence Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019); *Cain v.*

1 *Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (citing *Kenneth*
 2 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (“a
 3 court must assume that the allegations of the complaint are true and assume that a jury will return
 4 a verdict for the plaintiff on all claims made in the complaint”). Accordingly, CAFA’s
 5 requirement of at least 100 putative class members is satisfied.

6 7. Minimal diversity exists as between Plaintiffs and Defendants. For purposes of
 7 removal, citizenship of a corporation is based on the state under whose laws the entity was
 8 organized or where its principal place of business is located. 28 U.S.C. § 1332(c)(1). Plaintiffs
 9 are citizens of one of three foreign states – Bosnia and Herzogovenia, Slovenia, or Croatia. (FAC
 10 ¶ 1.) Defendant Tesla, Inc. is a citizen of California (FAC ¶ 17); Defendant Eisenmann
 11 Corporation is a citizen of Delaware and Illinois (FAC ¶ 18). The requirement of minimal
 12 diversity under CAFA is therefore satisfied. 28 U.S.C. § 1332(d)(2)(A) (“The district courts shall
 13 have original jurisdiction of any civil action [which] is a class action in which . . . any member of
 14 a class of plaintiffs is a citizen of a State different from any defendant.”).

15 8. In order to establish subject matter jurisdiction under CAFA, “the matter in
 16 controversy” needs to exceed “the sum or value of \$5,000,000, exclusive of interest and costs.”
 17 28 U.S.C. § 1332(d)(2). And, pursuant to 28 U.S.C. § 1332(d)(6), “the claims of the individual
 18 class members shall be aggregated to determine whether the matter in controversy exceeds the
 19 sum or value of \$5,000,000, exclusive of interest and costs.”

20 9. Here, the FAC does not state a specific demand for class damages. However, this
 21 is not the first time that certain Plaintiffs have brought a class action under the FLSA and
 22 California wage and hour law. In *U.S. ex rel. Lesnik, et al. v. Eisenmann SE, et al.*, N.D. Cal. Case
 23 No. 5:16-cv-01120-LHK, plaintiff Stjepan Pages (who is also a named plaintiff in this proceeding)
 24 served as the sole class representative on class wage and hour claims that are identical to those
 25 brought in this proceeding. Pages moved for an entry of default judgment on those claims as
 26 against ISM Vuzem, d.o.o., Robert Vuzem, and Ivan Vuzem, all defendants in this action. (See
 27 Memorandum of Points and Authorities in Support of Plaintiff Stjepan Pages’s Motion for Entry
 28 of Default Judgment on Class Wage and Hour Claims (“Pages Memo”), *Lesnik* Dkt. No. 488,

1 attached hereto as Exhibit B.) On behalf of himself and a putative class, Papes calculated damages
 2 related to overtime and double time wages (\$2,318,659.70), related liquidated damages
 3 (\$1,508,063.85), meal and rest period premiums (\$266,151), itemized wage paystub penalties
 4 (\$25,850), and waiting time penalties (\$754,020) for a total of \$4,872,744.55. Papes also sought
 5 attorney's fees in the amount of \$385,000. (Papes Memo at 16–22.) Exclusive of interest and
 6 costs, Papes sought damages of \$5,257,744.55 on behalf of himself and the same putative 177-
 7 member class. Papes's calculation methodology is detailed in the declaration of Katherine Fiest
 8 in support of the Papes Memo (*Lesnik* Dkt. No. 488-1, attached hereto as Exhibit C).

9 10. The Court denied Papes's motion for entry of default without prejudice on June 26,
 10 2020, citing concerns over subject matter and personal jurisdiction related to the non-appearing
 11 defendants. (*Lesnik* Dkt. No. 498.) The Court permitted Papes to file a renewed motion within
 12 60 days. (*Lesnik* Dkt. 498 at 3.) In response, Papes dismissed without prejudice his class wage
 13 and hours claims on August 25, 2020. (*Lesnik* Dkt. No. 512.) Papes's counsel then refiled the
 14 same claims two days later as part of this action.

15 11. Accordingly, given that Plaintiffs' class wage and hour claims are identical (or
 16 nearly identical) to those briefed on default judgment in *Lesnik*, and the calculated damages
 17 amounted to \$5,257,744.55 in *Lesnik*, CAFA's amount in controversy requirement has been met
 18 even without consideration of the amount in controversy on the other claims pled in this action.
 19 *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (future
 20 attorney's fees recoverable by statute must be included in the amount in controversy calculation
 21 under CAFA.)

TIMELINESS OF REMOVAL

22 12. Plaintiffs filed their Complaint on August 27, 2020 in the Superior Court of the
 23 State of California, County of Alameda but did not effectuate service of the Complaint on
 24 Defendants. Nor did Plaintiffs file returns of service for any other defendant.

25 13. Plaintiffs filed their First Amended Complaint on October 29, 2020. Eisenmann
 26 Corporation received service of the FAC on March 9, 2021. Tesla received service of the FAC
 27 on March 9, 2021.

1 14. Per the Alameda County docket, Plaintiffs have not filed returns of service related
2 to the FAC as to any defendant, including Eisenmann Corporation and Tesla, Inc. Plaintiffs' Case
3 Management Statement, filed March 30, 2021 and attached hereto as Exhibit D, notes that only
4 Eisenmann Corporation and Tesla, Inc. have been served to date with the FAC.

5 15. Defendants have not answered or otherwise pled in response to the FAC.

6 16. Under 28 U.S.C. § 1446(b), this Removal is timely because it was filed within
7 thirty days of service of service of the FAC on Defendants.

DEFENDANTS' CONSENT TO REMOVAL

9 17. Eisenmann Corporation and Tesla, Inc. are the only defendants served to date in
10 this matter and both consent to removal. (*See supra ¶ 14.*) Consent of unserved defendants is not
11 required to satisfy the unanimity of consent to removal requirement for removal under 28 U.S.C.
12 § 1446(a). *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988). And unanimity
13 of consent to removal is not required, in any event, for removal under CAFA. *See Westwood Apex*
14 *v. Contreras*, 644 F.3d 799, 806 (9th Cir. 2011).

PROPRIETY OF REMOVING TO THE NORTHERN DISTRICT

16 18. Plaintiffs filed the Underlying Action in the Superior Court of California, County
17 of Alameda, and it is thus properly removed to the jurisdiction of the United States District Court
18 for the Northern District of California, which “embrace[s] Alameda County, the “place where
19 [this] action is pending.” 22 U.S.C. § 1441(a).

STATE COURT DOCUMENTS

19. The exhibit attached to this Notice as Exhibit A is a true and complete copy of all
process, pleadings, and orders served upon Eisenmann and Tesla.

23 20. Written notice of the filing of this Notice of Removal is being given promptly to
24 Plaintiffs by service hereof, and a copy of this Notice of Removal is being promptly filed with the
25 Superior Court of California, County of Alameda as required by 28 U.S.C. § 1446(d).

26 WHEREFORE, Defendants Eisenmann Corporation and Tesla, Inc. hereby remove the
27 Underlying Action to this honorable Court.

1 Dated: April 8, 2021

Respectfully Submitted,

2 By: /s/Alexander J. Holtzman

3 Aaron M. Bernay, *pro hac vice forthcoming*
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17 *Attorneys for Defendant Tesla, Inc.*

20 **FILER'S ATTESTATION**

21 Pursuant to Civil L.R. 5-1(i)(3), I, Alexander J. Holtzman, hereby attest that concurrence
22 in the filing of this document has been obtained from each of the above signatories.

24 Dated: April 8, 2021

/s/Alexander J. Holtzman

25 Alexander J. Holtzman
Counsel for Defendant Eisenmann Corporation